

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PNC BANK, National Association,

Plaintiff,

Case No. 14-11709

Hon. Judith E. Levy

v.

MACAW, INC., a Michigan corporation;  
ELRINGTON MEDICAL CENTER, P.L.L.C.,  
a Michigan professional limited liability company;  
and ANN R. ELRINGTON, an individual;

Defendants.

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**PLAINTIFF'S MOTION TO DISMISS ACTION, WITHOUT PREJUDICE, AS TO ERROL G.  
ELRINGTON ONLY**

Plaintiff, PNC Bank, National Association, by and through its attorneys, Plunkett Cooney, for its Motion to Dismiss Action, Without Prejudice, as to Errol G. Elrington, Only, pursuant to Fed. R. Civ. P. 41(a)(2) states as follows:

1. Plaintiff PNC Bank, National Association (“PNC”) initiated this action on May 1, 2014, seeking to obtain a money judgment against the Defendants for a failed commercial loan. (Docket Nos. 1-2, Complaint).

2. MACAW, Inc. and Elrington Medical Center, P.L.L.C. were served on July 1, 2014 and defaults obtained against each on September 10, 2014. (Docket Nos. 10 and 11).

3. Despite the best efforts of its process server, PNC was unable to serve Errol G. Elrington (“Errol”) prior to the expiration of the summons.

4. Errol was dismissed from the litigation without prejudice on September 10, 2014. (Docket No. 13, Notice of Dismissal Pursuant to Fed. R. Civ. P. 41(1)(A)(k) as to Errol G. Elrington, Only, 9/10/14).

5. Ann R. Elrington (“Ann”) recently filed for Chapter 13 bankruptcy protection. Ann is the only defendant to have appeared before the Court on this matter, and the case against her is now administratively stayed pursuant to federal bankruptcy law.

6. PNC sought leave to amend its Complaint to include Errol as a defendant so that the remaining claims could be litigated efficiently. (Docket No. 18, Motion for Leave to File First Amended Complaint, 10/31/14). Upon information and belief, PNC believed it could serve Errol with a copy of the summons and complaint as Errol was likely back in the United States. This Court granted that motion and an amended complaint was filed. (Docket Nos. 19-20).

7. Despite PNC's best efforts, it has been unable to locate Errol. Upon information and belief, Errol is now a fugitive who has fled to Belize, presumably to escape the federal arrest warrant issued for him for Racketeering, Medicaid fraud, and health care fraud. See **Exhibit A**.

8. Given Errol's apparent act of absconding to a foreign country, proper service at this time under the Federal Rules of Civil Procedure is impossible.

9. PNC therefore moves this Court for an order voluntarily dismissing the action as to Defendant Errol Elrington. PNC requests that the dismissal be without prejudice, to allow it to take appropriate legal action against Errol if he returns to the United States before the applicable statute of limitation has expired.

10. Federal Rule of Civil Procedure 41(a)(2) authorizes this Court to voluntarily dismiss an action "upon such terms and conditions as the court deems proper." Importantly, "[u]nless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." Fed. R. Civ. P. 41(a)(2).

11. "Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court." *Grover by Grover v. Eli Lilly & Co*, 33 F.3d 716, 718 (6th Cir. 1994). "The primary purpose of the rule in interposing the requirement of court approval is to protect the defendant from unfair treatment." (*Id.*). Unless the defendant would suffer "plain legal prejudice" as a result of the dismissal without prejudice, a district court acts within its discretion in dismissing the action without prejudice. (*Id.*). Factors to

consider in making this determination as to whether a defendant will suffer plain legal prejudice include “the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.” *Id.*

12. Here, the above factors for determining “plain legal prejudice” weigh heavily against Defendant Errol. He has expended no effort or money on the case. He has not filed an answer. In fact, as PNC has explained, he has not even been served with the Amended Complaint because he has fled the United States. In these circumstances, the interests of justice favor PNC’s request for a dismissal of the action as to Defendant Errol Elrington without prejudice, so that if Errol returns to the country before the statute of limitation on the asserted claim(s) expires, PNC can obtain a judgment against him.

13. Pursuant to Local Rule 7.1(2), PNC was unable to seek concurrence in this motion as Errol is unavailable.

WHEREFORE, Plaintiff, PNC Bank, National Association respectfully requests this Court grant the instant Motion and enter an order dismissing the action, without prejudice, as to Defendant Errol Elrington, only. A copy of the proposed Order is attached as **Exhibit B**.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Emily M. Coyle

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Dated: February 25, 2015

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PNC BANK, National Association,

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS ACTION, WITHOUT  
PREJUDICE, AS TO ERROL G. ELRINGTON ONLY**

For this Brief in Support, PNC relies upon the information and authorities contained in the Accompanying Motion to Dismiss.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Emily M. Coyle

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Dated: February 25, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2015, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

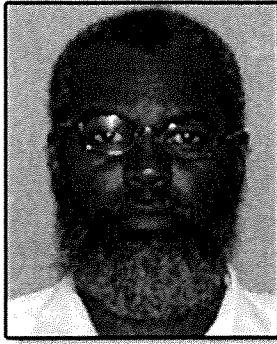
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# Exhibit A





## **ERROL ELRINGTON**

- On October 7, 2013, an arrest warrant was issued for Errol Elrington, M.D., for racketeering, Medicaid fraud, and health care fraud. Investigators believe that Elrington falsely billed Medicare and Medicaid more than \$400,000 for services that he never performed, and he employed an unlicensed physician who engaged in criminal sexual misconduct.
- According to the Felony Complaint, Elrington was a licensed physician practicing in the Redford, Michigan, area, and was the owner of a private medical center, Elrington Medical Center PLLC (EMC). Elrington allegedly employed an unlicensed physician to treat patients at EMC when he was not there, then billed Medicare and Medicaid as if he performed the services. Though he was the owner of EMC, Elrington spent most of his time employed as the chief medical officer at another medical facility that was unaffiliated with EMC.
- The unlicensed physician treated several patients and conducted multiple pelvic exams on a female patient, which resulted in charges of first degree criminal sexual conduct, racketeering, Medicaid fraud, health care fraud, and health profession unauthorized practice. The unlicensed physician is being held prior to trial.
- Elrington fled the United States for Belize less than 24 hours after being interviewed by Federal and State agents. He remains a fugitive at-large.



[Return to OIG Most Wanted Fugitives](#)

### **OIG Fugitives:**

**Daniel Guerra and Aiza Rodriguez**

# Exhibit B

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**PROPOSED ORDER TO DISMISS ACTION, WITHOUT PREJUDICE,**  
**AS TO ERROL G. ELRINGTON ONLY**

This matter having come before the Court on Plaintiff's Motion to Dismiss Action,  
Without Prejudice, as to Errol G. Elrington only, the Court having read the Motion and being  
otherwise advised of the premises;

**IT IS HEREBY ORDERED** that, for the reasons stated in the Motion, Errol G. Elrington is dismissed from this action without prejudice or costs to either side.

This is a final order and closes the case.